



## **PUBLIC SESSION MINUTES**

**Tuesday, May 11, 2010**

**Dolce Hayes Mansion  
Monterey Room  
200 Edenvale Avenue  
San Jose, CA 95136**

**Members Present:** Larry L. Renner, BS, RCP, RRT, RPFT, President  
Barbara M. Stenson, RCP, RRT  
Lupe V. Aguilera  
Murray Olson, RCP, RRT-NPS, RPFT  
Richard L. Sheldon, M.D.  
Charles B. Spearman, MEd, RCP, RRT

**Staff Present:** Dianne Dobbs, Legal Counsel  
Stephanie Nunez, Executive Officer  
Christine Molina, Staff Services Manager  
Liane Freels, Staff Services Manager

### **CALL TO ORDER**

The Public Session was called to order at 9:07 a.m. by President Renner. A quorum was present.

### **ADMINISTER OATH OF OFFICE**

President Renner administered the Oath of Office to Murray Olson.

### **APPROVAL OF FEBRUARY 5, 2010 PUBLIC SESSION MINUTES**

Dr. Sheldon moved to approve the February 5, 2010 Public Session minutes as written.

Dr. Sheldon commented he had not received the list of signatures from Mr. Roth as agreed upon at the February 5<sup>th</sup> board meeting. He asked that staff contact Mr. Roth to follow up.

M/ Sheldon /S/Spearman  
Unanimous: Aguilera, Olson, Sheldon, Spearman, Stenson  
MOTION PASSED

**EXECUTIVE OFFICER'S REPORT**  
*(Stephanie Nunez)*

**JOB CREATION AND LICENSING BACKLOG REDUCTION PROJECT**

Ms. Nunez explained that as part of the Job Creation and Licensing Backlog Reduction Project, the Governor has made the processing of applications and licensing backlog a priority. In support of the project, the Governor has authorized overtime and temporary help to provide necessary resources to ensure timely processing of applications and renewals through the end of the fiscal year. Ms. Nunez stated that these resources will help tremendously as the busiest application period occurs during the last few months of the fiscal year.

**CALIFORNIA COLLEGE SAN DIEGO TRANSCRIPT REVIEW UPDATE**

Ms. Nunez provided the Board with an update and explained that a more detailed report will be given in November. She stated out of the 19 initial transcripts staff reviewed, 18 were correct while 1 required 3 submissions. Since then, of the new transcripts submitted to the Board, 29 were correct and 4 required a second submission. Ms. Nunez stated the transcripts are now being submitted along with the corresponding catalog making it much easier to identify what is missing and overall she sees an improvement.

Ms. Stenson inquired if there are any other schools having this sort of problem. Ms. Nunez responded that no other school has these issues.

Ms. Nunez was asked by the Board if she felt satisfied with the response of CCSD's program, or if more action needs to be taken. Ms. Nunez responded she is satisfied in the fact that they are giving the Board the information needed to review the transcripts, and that fewer resources are required to identify problems. However, she felt it is still premature to fully respond.

Ms. Stenson inquired if there is a mechanism to report issues to the Bureaus for Private Postsecondary Education (BPPE). Ms. Nunez stated that she will verify what jurisdiction BPPE has as it relates to CCSD, and what the process would be to file a complaint if the Board had future concerns.

**UNIFORM STANDARD #4 SUBCOMMITTEE (SB 1441)**

Ms. Nunez followed up on the concerns from the last meeting regarding the number of drug tests for probationers per year as established by the SB 1441 guidelines (104 times for the first year and 52 for subsequent years) stating a meeting was held with the Substance Abuse Coordination Committee. She stated that while that standard is in place and has already been adopted, the Director has asked Ms. Nunez to chair a subcommittee to look at this particular standard to see if it warrants being modified or adjusted.

**UNLICENSED/UNAUTHORIZED PRACTICE, RECENT ALJ DECISION**

Ms. Nunez shared the final outcome in the matter of the Citation and Find against A Grace Sub Acute and Skilled Care Facility. However, she advised the Board that the facility has indicated it would be

filing a Writ of Mandate to appeal the decision. She also stated that it should take somewhere around 60 to 90 days for a final outcome. The Board Members commended staff for their exceptional work on this case. Ms. Nunez also commented that Michael Werner, the Board's Expert Witness in the matter also did an outstanding job.

### AARC'S 2015 AND BEYOND PROJECT

Ms. Nunez stated Mr. Spearman will be attending the third and final meeting for the Creating a Vision for Respiratory Care in 2015 and Beyond, hosted by the American Association for Respiratory Care.

### BUDGET CHANGE PROPOSALS

Ms. Nunez explained that because existing staff is no longer able to absorb the increase in applications and enforcement workload, additional staffing for the Licensing and Enforcement Programs is being requested as part of the Budget Change Proposal process

### **PUBLICATION OF PROGRAM PASS/FAIL RATES**

*(Christine Molina)*

Ms. Molina reviewed an e-mail received from a program director expressing concerns with the existing Program Pass/Fail Information posted on the Board's website. Following receipt of the e-mail, staff reviewed the existing format of the report to determine what revisions could be made to address the issues raised. Ms. Molina explained that recommendations had been listed for consideration by the Board.

Mr. Spearman suggested making it less confusing by removing the "All Candidate Summary" as that percentage can easily be figured out using the "New" and "Repeat Candidate" information.

Dr. Sheldon questioned the numbers for Crafton Hills College. Ms Nunez agreed they didn't seem correct and stated Staff would follow up on the data for both Crafton Hills and Orange Coast College.

Ms. Molina further explained pursuant to its contract agreement, the NBRC is only required to provide overall program data, not data by graduating class.

Ms. Molina questioned whether changing the reporting period might allow the report to capture more of the specific graduating classes.

Dr. Sheldon moved to change the report to represent the calendar year, remove the "All Candidate Summary" and report only "New Candidate Summary" and "Repeat Candidate Summary" percentages. Also, add a brief description of each summary and run for two years, re-evaluating at the end of that period.

M/ Sheldon /S/Spearman

Unanimous: Aguilera, Olson, Sheldon, Spearman, Stenson

MOTION PASSED

### **PROPOSED REGULATORY LANGUAGE**

*(Stephanie Nunez)*

Ms. Nunez reviewed amended language related to: Disciplinary Guidelines, Uniform Standards, Citations and Fines, Education Waiver, application processing time and clean up. She explained this

is draft language and will change as SB 1111 and SB 1172 are amended, but asked for any comments or concerns based on the current proposal.

Ms. Nunez reviewed the following:

§1399.303 Delegation of Authority: Gives the Executive Officer the authority to approve any stipulated settlements where the person surrenders their license as a result of an accusation being filed to revoke it.

§1399.320 Applications: In an effort to get applications processed faster, changes the submission time for documentation to 90 days prior to the receipt of an initial application versus 30.

§1339.30 Education Waiver Criteria: Recognizes military service when determining educational experience. This section also does not require the board to waive requirements for poor work performance or to determine if waiver criteria has been met with staffing agencies and registries.

§ 1399.335 Notice to Disapprove Respiratory Therapy School: The current process under this article provides respiratory therapy programs a 30-day notice prior to the matter being heard by the board however, Ms. Nunez asked the board to consider changing this to send a complaint or request to BPPE to investigate the issue. If for some reason this bureau disbands again, the board can use the current process.

§1399.352.7. Law and Professional Ethics Course Criteria: Clean up and amend subdivision (a) to include the board as an Ethics course provider along with AARC and CSRC.

§ 1399.360. Unlicensed Personnel Services; Home Care: Dr. Sheldon suggested including "Connection to an adequate dependable and safe hook up to a power source" (viii) to subdivision (C) Instruct patient in the proper and safe operation of oxygen equipment. He further stated that apply to all home care equipment: apnea, monitors and ventilators.

§ 1399.370. Substantial Relationship Criteria: Added various crimes or acts to be considered for the purpose of denial, suspension or revocation of a license to include the possession of drug paraphernalia.

§1399.377 Records from Employers: Asks that records from employer be provided within 10 business days

§1399.378. Licensee Reporting: Change section numbers and obtain consistency with the number of days information is required to be reported.

§1399.379. Employer Reporting: Change section numbers and obtain consistency with the number of days information is required to be reported.

§1399.380 Citations: Rework into one section applying to all and clearly defines process.

§ 1399.381 Fines: Fines clarified and can exceed \$2,500 (changed in B& P code to \$5000 last year)

Discussion ensued

Ms. Nunez explained all these citation and fines are based on four different factors as listed in §1399.380 (g):

(1) The gravity of the violation

- (2) The good or bad faith exhibited by the cited person
- (3) The history of previous violations
- (4) The extent to which the cited person has cooperated with the board's investigation

Ms. Nunez stated first time violators (unless it was an exceptionally heinous act) would not get the maximum fine. She explained these are maximum limits listed and would change the language for clarification.

§ 1399.395. Fee Schedule: Proposed to raise Application Fee to a flat \$300 for every kind of application. Currently there is a different fee for out-of-state and eliminate the initial licensing fee, which is currently \$200 (prorated between \$48 to \$188). This would speed up the licensing process from two to four weeks.

Discussion ensued.

Mr. Olson summarized for clarification that this would mean a possible \$12 increase (in the worse case scenario) to a \$65 decrease (in the best case) and that most would pay less.

Ms. Nunez stated there would no longer be a 6 to 17 month time frame; it would be 11 to 24 months. She stated the benefits would be that initial licenses would be for a longer period of time and the time it took to obtain a license would be much quicker.

Ms. Nunez suggested adding this information in a letter to the program directors explaining how this will affect the applicants.

President Renner moved that the staff work with legal counsel to amend the language as needed to coincide with SB 1111 and SB 1172 and move forward with the regulation process once these bills are on the Governor's desk.

M/ Renner /S/Sheldon

Unanimous: Aguilera, Olson, Sheldon, Spearman, Stenson

MOTION PASSED

Ms. Nunez outlined the changes to the Disciplinary Guidelines to include:

- Adding, under Evidence in Aggravation of Penalty, #10 "Commission of any crime against a minor, or while knowingly in the presence of, or while caring for, a minor"
- Suspension is required for anyone using or possessing drugs or alcohol at work
- Under the Probation Monitoring Program, add language that loosens the ability to discuss work status, performance and monitoring with the probationer's employers, supervisors or managers
- Clarification on biological fluid testing
- Adding a standard for suspension
- New Violations & Consequences Standards

Discussion ensued on biological fluid testing.

Since the Board will review the amended Disciplinary Guidelines again in October, Ms Nunez asked the Board Members to provide her with any additional considerations and/or changes by mid June.

## **TWENTY FIVE YEARS OF RCP LICENSURE RECOGNITION**

At 10:30 a.m., the Board convened to the Edenvale Room for a presentation by Brian Stiger, Director of the Department of Consumer Affairs, recognizing twenty five years of respiratory care practitioner licensure, and reconvened at 11:10 a.m.

### **DCA DIRECTOR'S REPORT**

*(Director Stiger)*

Director Stiger gave updates on the following topics:

CONSUMER PROTECTION ENFORCEMENT INITIATIVE (CPEI): Director Stiger stated it is an ongoing process of developing administrative improvements to the enforcement process and the Department is about two-thirds complete. A Budget Change Proposal has been submitted. The Enforcement Academy has been launched to make sure all Investigators and enforcement staff members understand all aspects of their job duties. Starting in July, DCA will ask all boards, bureaus and programs to develop performance measures which will be posted on their respective websites.

CONTINUING COMPETENCY: Director Stiger indicated that "continuing competency" is used as a form of proactive enforcement. The Board of Podiatry established a continuing competency program in 1999 which reduced their intake of consumer complaints by about 50%.

REGULATORY NEXT PRACTICES: A Working Conference Meeting will be held July 27, 2010. Its purpose is to provide critical training to board members. He indicated that more information is posted on the Department's website.

WEBCASTING: As a form of transparency, webcasting is available to use for board meetings and can be used both on the road and at DCA.

MEETING SITES: As a cost savings measure, Director Stiger asked that the Board try to choose low cost or no cost locations for its meetings.

### **PETITION TO TERMINATE PROBATION HEARING: KIERAN COX, RCP**

The Board heard the Petition for Termination of Probation for Respiratory Care Practitioner, Kieran Cox.

The Board convened into Closed Session, as authorized by Government Code Section 11126c, subdivision (3) at 12:40 p.m. and reconvened into Public Session at 12:50 p.m.

### **LEGISLATION OF INTEREST**

*(Larry Renner)*

President Renner praised the California Society for Respiratory Care stating they played a significant role in stopping AB 2174 which would have required the California Department of Health Care Services to reduce its respiratory therapy hours by one hour per patient day in the sub acute setting.

Mr. Olson moved to:

Support - AB 978

Watch - AB 1659  
Watch - AB2130  
Watch - AB 2699  
Watch - SB 1171  
Watch - SB 1172

M/ Olson /S/Aguilera

Unanimous: Aguilera, Olson, Sheldon, Spearman, Stenson

MOTION PASSED

### **DISCUSSION: DISCIPLINE IMPOSED ON CASES INVOLVING MARIJUANA USE/POSSESSION**

*(Stephanie Nunez)*

Ms. Nunez stated that following a prior disciplinary decision, this item was requested to be placed on the agenda during the discussion of the new uniform standards and drug testing. Discussion ensued regarding possibly modeling the discipline imposed for these types of cases after a DUI case.

Ms. Nunez stated currently the discipline imposed for licensees receiving their first DUI, would be possible citation and fine. If drug use or possession is involved, the discipline imposed would be probation.

Discussion ensued.

In summary, President Renner agreed while it is still an illegal substance, the case reviewed would have been better served by a simple cite and fine.

### **PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA**

There were no public comments.

### **FUTURE AGENDA ITEMS**

Consideration of the Registered Respiratory Therapist (RRT) credential as part of licensure.

### **ADJOURNMENT**

The Public Session Meeting was adjourned by President Renner at 1:25 p.m.

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LARRY L. RENNER  
President

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STEPHANIE A. NUNEZ  
Executive Officer